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516398—59

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 195

UNITED STATES EX REL. TIE SING ENG, PETITIONER

v.

P. A. ESPERDY, DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE IN THE NEW YORK DISTRICT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the Court of Appeals for the Second Circuit (R. 22a–23a) is reported at 266 F. 2d 957. The opinion of the District Court for the Southern District of New York (R. 4a–7a) is reported at 165 F. Supp. 633.

JURISDICTION

The judgment of the Court of Appeals was entered on June 1, 1959 (R. 22a). The petition for a writ of certiorari was filed on July 8, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Petitioner, a Chinese national, signed on a Dutch ship in Rotterdam. He was admitted to the United States for twenty-nine days as an alien seaman but remained in this country beyond that time. The question is whether, in effecting petitioner's deportation to the Netherlands which had agreed to accept him, the United States was required to obtain assurances that petitioner would be granted permanent residence in that country.

STATUTE INVOLVED

Section 243(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1253(a), provides:

> The deportation of an alien in the United States provided for in this Act, or any other Act or treaty, shall be directed by the Attorney General to a country promptly designated by the alien if that country is willing to accept him into its territory, unless the Attorney General, in his discretion, concludes that deportation to such country would be prejudicial to the interests of the United States. No alien shall be permitted to make more than one such designation, nor shall any alien designate, as the place to which he wishes to be deported, any foreign territory contiguous to the United States or any island adjacent thereto or adjacent to the United States unless such alien is a native, citizen, subject, or national of, or had a residence in such designated foreign contiguous territory or adjacent island. If the government of the country designated by the alien fails finally to advise the Attorney General within three months following original in-

quiry whether that government will or will not accept such alien into its territory, such designation may thereafter be disregarded. Thereupon deportation of such alien shall be directed to any country of which such alien is a subject national, or citizen if such country is willing to accept him into its territory. If the government of such country fails finally to advise the Attorney General or the alien within three months following the date of original inquiry, or within such other period as the Attorney General shall deem reasonable under the circumstances in a particular case, whether that government will or will not accept such alien into its territory, then such deportation shall be directed by the Attorney General within his discretion and without necessarily giving any priority or preference because of their order as herein set forth either—

(1) to the country from which such alien last entered the United States;

(2) to the country in which is located the foreign port at which such alien embarked for the United States or for foreign contiguous territory;

(3) to the country in which he was born;

(4) to the country in which the place of his birth is situated at the time he is ordered deported;

(5) to any country in which he resided prior to entering the country from which he entered the United States;

(6) to the country which had sovereignty over the birthplace of the alien at the time of his birth; or

(7) if deportation to any of the foregoing places or countries is impracticable, inadvisable, or impossible, then to any country which is willing to accept such alien into its territory.

STATEMENT

Petitioner, a Chinese national and native, signed as a member of the crew on a Dutch vessel, S.S. *Ternate*, at Rotterdam (R. 11a), and arrived in the United States in February 1956. He was admitted into the United States as an alien seaman for a period not to exceed twenty-nine days, but he remained in this country beyond that period of time. A warrant of deportation was therefore issued against petitioner and a deportation hearing followed. At the hearing, petitioner conceded his deportability and designated Singapore as the country to which he desired to be deported. An order for deportation was issued in December 1956.

The British Government, however, advised the Immigration and Naturalization Service that petitioner was not admissible into Singapore (R. 16a). Deportation to China was subsequently stayed administratively under Section 243(h) of the Immigration and Nationality Act on the ground that petitioner would be likely to be subject to physical persecution.

In 1958, the Dutch Government agreed that it would accept petitioner on his arrival in the Netherlands from the United States. On September 2, 1958, petitioner was taken into custody by the Immigration and Naturalization Service pending deportation to the Netherlands. Petitioner thereupon filed a petition for a writ of habeas corpus in the district court

contending that his deportation was illegal because he would not be given permanent residence in the Netherlands by reason of the fact that he is a Chinese citizen. In view of these charges, the Immigration and Naturalization Service obtained from the Dutch Consulate General specific advice that the Dutch Government was willing to accept petitioner. The Consulate General indicated that if petitioner "had no previous residence in the Netherlands he will probably be transported back, again as a passenger, to the port where he originally signed on a Netherlands vessel" (R. 20a–21a).

The district court denied the petition for a writ of habeas corpus, pointing out that, under Section 243(a)(7) of the Immigration and Naturalization Act (*supra*, p. 4), there is no requirement that the United States obtain assurances that a deportee, once accepted, will be granted permanent residence within the accepting country. It also noted that petitioner's deportation to the Netherlands was warranted under Section 243(a) (1) and (2) of the Act (*supra*, p. 3), since the Netherlands was the country from which petitioner entered the United States. The Court of Appeals affirmed on the opinion of the district court.

ARGUMENT

Section 243(a) of the Immigration and Nationality Act of 1952 provides that a deportable alien should be sent to the country of his choice. If this is not possible, it then gives the Attorney General discretionary power to effect deportation to any of seven categories of countries, including (1) "the coun-

try from which such alien last entered the United States" and (2) "the country in which is located the foreign port at which such alien embarked for the United States." Subdivision (7) provides that, if deportation to the prior specified categories is impracticable, the alien should be deported "to any country which is willing to accept such alien into its territory." Petitioner seeks to raise the question of whether "accept" as used in subdivision (7) means accept for permanent residence.

That issue is not, however, presented by this case. Petitioner was properly deportable to the Netherlands under subsections (1) and (2), since Singapore, the country of his choice, had refused to accept him. The Netherlands was both the country from which he entered the United States and the country in which is located the foreign port at which he embarked for the United States. Certainly, it was within the valid discretionary power of the Attorney General, provided in Section 243(a), to utilize subsections (1) and (2) in order to return petitioner, who entered the United States illegally, to the country whence he came. Thus, regardless of petitioner's contention as to the meaning of subsection (7), he was properly deportable to the Netherlands.

In addition, petitioner is properly deportable to the Netherlands under subdivision (7) as well. It is clear that the Netherlands is willing to accept him. Whether, thereafter, the Netherlands will be willing to allow him to remain as a resident is not a matter which the statute makes a concern of the United States.

Petitioner has completely failed to prove his contention below (R. 7a; 165 F. Supp. at 634–635) that deportation to the Netherlands would in effect be deportation to Communist China.[1] Nor has he offered any evidence in support of his claim here (Pet. 3–5) that he will be expelled from the Netherlands and become a "Man Without A Country." The letter from the Dutch Consulate General stated only that, if petitioner was not a Dutch resident, he would "probably" be transported back to the port where he originally signed, apparently Singapore (see Pet. 2). The letter gave no indication that petitioner would still be expelled even though the country where that port was located refused to accept him. Whether the Dutch Government can succeed in having petitioner accepted by Singapore, when the United States was unable to do so, is not a matter which, under the Act, is the proper concern of the immigration authorities or the courts. And, if the Netherlands is successful, petitioner will merely be sent to Singapore, the country to which he asked the United States to deport him.

[1] Contrary to petitioner's contention (Pet. 3, 4), the record shows that petitioner was given ample opportunity to present evidence in support of his contentions (R. 22a).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1959.

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